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1 that's correct.

2 **Q. And no asbestos insurance**
3 **entity was consulted about the terms of**
4 **it, correct?**

5 MS. HARDING: Object to
6 form.

7 MR. FINCH: Object to form.

8 THE WITNESS: At one level,
9 that's certainly true. I mean, I
10 will say that, in fact, I believe
11 that there were -- because of the
12 process that we went through of
13 filing successive draft versions
14 of this, in effect, the insurer
15 saw earlier versions of the TDP,
16 indeed, I think have objected to
17 various provisions in them. And
18 those objections could be reviewed
19 as commenting on them. And then
20 there were filed amended versions
21 of them.

22 So to that extent, I guess,
23 they did have an opportunity to,
24 quote, comment on them, close

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1 quote. But other than through the
2 process that I have just
3 described, no.

4 BY MR. BROWN:

5 **Q. Okay. The question was**
6 **whether they were consulted concerning**
7 **them.**

8 A. Well, I understand that, and
9 sending you a -- serving a copy on you
10 and having you make an objection or file
11 some comment or argument in court could
12 be viewed at some level as consulting.

13 But, as I said, we didn't do
14 it other than in the manner that I just
15 described. If you don't think that's
16 consulting, that's fine.

17 **Q. And no asbestos insurance**
18 **entity consented in writing or orally to**
19 **the terms of the TDP, correct?**

20 MS. HARDING: Object to
21 form.

22 MR. FINCH: Object to form.

23 THE WITNESS: Except for
24 Equitas and KWELM in the manner

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1 that I described earlier in my
2 deposition. That's as far as I
3 know, correct.

4 BY MR. BROWN:

5 **Q. Okay. Did any asbestos**
6 **insurance entity play any role in the**
7 **establishment of a medical criteria in**
8 **the TDP?**

9 MS. HARDING: Object to the
10 form.

11 THE WITNESS: Not to my
12 knowledge.

13 BY MR. BROWN:

14 **Q. How about the exposure**
15 **criteria?**

16 A. Same answer.

17 **Q. How about the claims**
18 **resolution process?**

19 A. Same answer.

20 **Q. How about any other term in**
21 **the TDP?**

22 MR. FINCH: Object to form,
23 overly broad.

24 THE WITNESS: Again, the

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1 only role that was played was --
2 well, let me back up a second.
3 This TDP is in most particulars
4 similar, if not identical, to TDPs
5 that have been adopted in prior
6 asbestos bankruptcy cases.

7 In many of those cases, the
8 same insurers have objected to the
9 same provisions of the TDPs that
10 they object to now. And in some
11 cases, over time the TDPs have
12 actually been modified and,
13 indeed, in some cases, some of the
14 provisions that we talked about,
15 like the one relating to providing
16 access for insurance coverage, I
17 believe was put into a TDP along
18 the way, not this one for the
19 first time, but some earlier TDP,
20 because it became apparent that
21 that was going to be needed to
22 deal with insurance problems.

23 And to that extent, the
24 insurers, as a result of this

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cumulative iteration process, have had that sort of a role. Obviously, that's not the kind of role you have in mind. The kind of role you have in mind is coming to you and saying we want to negotiate about it, we want to get your agreement to it, we want to get your approval of it. And that sort of a role, to my knowledge, you didn't have on this TDP.

BY MR. BROWN:

Q. All right. Under this TDP, is there any role for any asbestos insurance entity --

A. In --

Q. Well, I hadn't finished.

A. Sorry.

Q. -- in connection with any of the claims resolution processes?

A. Well, you yourself identified one a few questions back, which is if the claimant doesn't settle its claim with the Trust, brings the

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was to allow insurers to handle the claims, they would have to right under this document and the Trust Agreement with the consent of the TAC and the FCR to amend it to give the insurers a right. But, in its present form, there is no express provision involving the insurers in the claims resolution process.

Q. And that's true for the expedited review, individual review, and arbitration, correct?

A. It's certainly true of the expedited review and individual review. It's an interesting question whether or not the Trust could tender a claim for arbitration to an insurer. I don't know whether there is anything that would prohibit them from doing that.

Arbitration is, to some extent, like litigation, and they could certainly tender a claim for an insurer, a litigation claim to an insurer. They might be able to. I don't know of anything that would preclude them, I

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claim against the Trust in the tort system, and the Trust has to defend it. It is certainly within the contemplation of these documents that the Trust could tender that defense in that claim to an insurer.

Q. Okay.

A. And that would be where the Trust -- while it doesn't spell that out in here, that would certainly be a place where an insurer might have an involvement.

Beyond that, there is nothing in the Trust that expressly addresses any participation by insurers in the claims resolution process.

That said, if some coverage court decides that the insurers have the right to participate in the claims resolution process, the TDP has amendment procedures in it, and the trustees might very well conclude that if the only way they could get access in the future to a lot of valuable assigned insurance rights

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guess, from tendering it to an insurer for arbitration. I don't know.

Q. But the TDP doesn't spell out any role?

A. The TDP doesn't spell it out, no.

Q. Let's go to Section 2.6.

A. Of which document?

Q. Trust Distribution Procedures, ACC-11.

A. Okay.

Q. Now, the first question I have, that refers to indirect PI Trust claims?

A. Correct.

Q. There is in Section 5.12 and 5.13 a couple of other terms that are used. In 5.12, the term "insurer-related TDP claims" is used.

A. Correct.

Q. In 5.13, the term "indemnified insurer TDP claims" is used.

And my first question is whether those two terms are included

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1 **within the term "indirect PI Trust**
2 **claim"?**

3 A. Well, that's, again, almost
4 a metaphysical debate, because --
5 actually, if you really parse the
6 definitions in the Plan, I remember
7 concluding that there was probably a
8 better argument that the claims that are
9 identified in 5.12 and 5.13 were direct
10 PI Trust claims and not indirect PI Trust
11 claims.

12 But we decided, rather than
13 to have to get into parsing things --
14 this is a classic example, these two
15 provisions of how you change TDP
16 provisions when insurers raise objections
17 that you think are meritorious in some
18 way or another. We decided to just have
19 these specific provisions deal with
20 claims that are being channelled to the
21 Trust, whether they are direct claims or
22 indirect claims, being sort of not a
23 matter of great moment. They are one or
24 the other or both. And so they are dealt

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1 with in these two specific provisions --
2 MR. FINCH: Which two are
3 you referring to?

4 THE WITNESS: 5.12 and 5.13.

5 -- to make sure that
6 everybody knew exactly how they
7 were going to be dealt with.

8 BY MR. BROWN:

9 Q. So is your answer that the
10 terms "insurer-related TDP claims" and
11 "indemnified insurer TDP claims" might be
12 direct Trust claims or, on the other
13 hand, might be indirect Trust claims?

14 A. My own personal opinion is
15 that they are direct PI Trust claims, if
16 you go back to the Plan and look at the
17 definitions.

18 Q. Is that the ACC's position
19 or your personal position or both?

20 A. Well, I mean, I am the ACC
21 representative, and I was the one who was
22 most involved in drafting the Plan, so I
23 guess it's the ACC's perspective.

24 I personally don't see

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1 frankly at the end of the day that it
2 matters whether they are direct or
3 indirect claims, and that's why we didn't
4 attempt to change the definition.
5 Remember, these two provisions are new.

6 Q. I know.

7 A. They were drafted long after
8 the definitions of direct and indirect PI
9 Trust claims were put in both the Plan
10 and in this TDP.

11 And so the question is, was
12 there any utility having agreed to put
13 these provisions in to deal with these
14 particular kinds of claims to going back
15 and trying to sort of re-write the
16 definitions of direct claims and indirect
17 claims to put them in one basket or the
18 other, and we couldn't see that it
19 mattered.

20 But if you, through your
21 probing cross-examination, convince me
22 that it does matter, then maybe we will
23 have to go and fix it.

24 Q. Well, we are using the term

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1 "direct PI Trust claim," and I am not
2 sure there is such a term.

3 A. Well, there may not be. I
4 don't think there is an indirect PI Trust
5 claim, and I don't remember what -- there
6 is some term that we used for the claims
7 that are going in here somewhere, I would
8 assume.

9 Q. Well, you have asbestos PI
10 claims.

11 A. Well, maybe that's the term.
12 Yeah, it's asbestos PI claims.

13 Q. So the ACC --

14 A. It's on page 1, unnumbered
15 page 1, second line. It says,
16 "...provide for resolving all 'Asbestos
17 PI Claims' as defined in the First
18 Amended Joint Plan of Reorganization," et
19 cetera.

20 Q. I am sorry. What document
21 are you in?

22 A. TDP, page 1, second line on
23 the page. There is the reference to
24 asbestos PI claims in quotes as defined

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1 in the First Amended Plan. That's the
2 generic term. And indirect PI Trust
3 claim is simply a subset of that. And I
4 don't think it's an indirect PI Trust
5 claim. I think it's an asbestos PI claim
6 which, of course, happens to include in
7 its definition indirect PI Trust claims.

8 (There was an interruption
9 at this time.)

10 BY MR. BROWN:

11 **Q. Just to circle out this line**
12 **of questioning, there is a Section in**
13 **5.6.**

14 A. Of the TDP?

15 **Q. Of the TDP.**

16 A. That's the section that
17 deals with PI claims.

18 **Q. So based on your answers**
19 **that you just gave, I presume that the**
20 **ACC's position is that 5.6 has no**
21 **application to insurer-related TDP claims**
22 **or indemnify insurer TDP claims?**

23 A. Correct.

24 MS. HARDING: I think I

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1 wanted to object to form before
2 you answered, but that's all
3 right.

4 BY MR. BROWN:

5 **Q. Okay. Let's go to page --**

6 MS. HARDING: Could you
7 repeat the question, please?

8 (The reporter read from the
9 record as requested.)

10 MS. HARDING: Object to
11 form. I think it's very
12 confusing.

13 THE WITNESS: To make it
14 clear, the way in which the term
15 of the so-called insurance related
16 TDP claims are treated under the
17 TDP is set forth in Section 5.12
18 of the TDP and not in Section 5.6
19 of the TDP.

20 Similarly, the way in which
21 indemnified insurer TDP claims is
22 defined in the TDP, are treated
23 under the TDP is contained in
24 Section 5.13 of the TDP and not in

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Section 5.6 of the TDP.

2 BY MR. BROWN:

3 **Q. If I can direct your**
4 **attention now to Section 4.3 of the TDP.**

5 A. I have it.

6 **Q. Let's see. The third full**
7 **paragraph begins "There is uncertainty."**
8 **I direct your attention to the second**
9 **sentence there.**

10 A. Yes.

11 **Q. If federal or state law were**
12 **to impose greater restrictions or limits**
13 **on the asbestos PI claimants to recover**
14 **in the tort system, is there a mechanism**
15 **under the Trust Agreement or the Trust**
16 **Distribution Procedures to incorporate**
17 **such restrictions or limits into the TDP?**

18 A. Yes, you could amend them.

19 **Q. Okay. And does that**
20 **amendment require the consent of the**
21 **Trust Advisory Committee?**

22 A. Subject to the ability to go
23 to court if the trustees disagree with
24 the TAC's refusal to give such consent,

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1 yes.

2 **Q. Okay.**

3 A. I would also observe,
4 however, that to some extent, changes in
5 federal or state law could show up
6 without amendments to the TDP. Because
7 in individual review, arbitration and
8 claims that go through to the tort
9 system, the trustees can apply applicable
10 state or federal law principles that
11 govern those claims.

12 The only claims for which
13 there are specified criteria, which might
14 or might not -- strike -- which might
15 become superseded at some level by some
16 hypothetical state or federal law would
17 be the expedited review provisions. They
18 are the ones that are written down.

19 Everything else is you have
20 a claim, to the extent that you have a
21 valid claim under state law for
22 individual review, arbitration, and the
23 tort system.

24 So to the extent that you

1 had such changes, they began to show up
2 in the results of individual review,
3 arbitration, or litigation in the tort
4 system, that could affect the totality of
5 the PI Trust claims to be paid over time,
6 which is what this sentence is talking
7 about.

8 **Q. All right. If you look at**
9 **Section 5.3(a)(3), specifically the**
10 **sentence that begins "thereafter."**

11 MR. FINCH: What page are
12 you on, Mike?

13 MR. BROWN: Mine is page 23.

14 THE WITNESS: 23. I see it.

15 BY MR. BROWN:

16 **Q. Okay. Now, there are some**
17 **limitations imposed by Section 524(g) and**
18 **by the Trust Agreement on the types of**
19 **changes that can be made under the TDP.**
20 **Is that a fair statement?**

21 MR. FINCH: Object to form.

22 THE WITNESS: I am not sure,
23 actually. What sort of
24 limitations do you have in mind?

1 BY MR. BROWN:

2 **Q. Looking at the sentence that**
3 **I just directed you to, are there any**
4 **restrictions placed on the trustee in**
5 **terms of how they can change any of these**
6 **items, the disease levels, the scheduled**
7 **values, the medical or exposure criteria,**
8 **et cetera?**

9 A. Well, first, they have
10 fiduciary obligations to the
11 beneficiaries of the Trust which would
12 preclude them from making arbitrary
13 decisions that work to the detriment of
14 claimants. So they have that sort of
15 restriction, but that's sort of general.

16 They have a restriction of
17 sorts in the need to go through the
18 consent process. But at the end of the
19 day, they could do it, as I said earlier,
20 if a judge thought that either the FCR or
21 the TAC or both were being unreasonable.

22 I suppose, to go back to
23 your earlier question, that one could
24 hypothesize -- at some level, the

1 trustees are obligated to make sure that
2 the Trust continues to comply with
3 524(g). There is no question about that.
4 It's just hard to know what sort of
5 changes you could imagine that would be
6 consistent with their fiduciary duties to
7 the claimants that would jeopardize that.
8 So, yeah, it's a restriction, I guess,
9 but how it would actually ever come into
10 play, I don't know.

11 **Q. There is a reference on page**
12 **28 to foreign claims.**

13 A. Yes.

14 **Q. Which does not include**
15 **claims in U.S. jurisdictions or Canada.**

16 A. Correct.

17 **Q. Are there other claims**
18 **pending out there in other jurisdictions**
19 **right now?**

20 A. Against Grace?

21 **Q. Yes.**

22 A. I am not personally aware of
23 any such claims, but there have been
24 claims brought against other trusts by

1 non-residents of the United States and
2 Canada. So, therefore, since it's
3 possible, you put in a provision that
4 deals with the possibility that it might
5 occur in this case.

6 I mean, this is sort of a
7 standard provision nowadays in these
8 trusts. I don't think it's responsive to
9 anything particular in the Grace case.
10 But, as I say, I just don't remember any
11 such claims.

12 **Q. All right. Can you turn to**
13 **page 31?**

14 A. I am there.

15 **Q. The paragraph that begins,**
16 **"with respect"?**

17 A. Yes.

18 **Q. About halfway down the**
19 **sentence that begins "The choice of law**
20 **provision..."?**

21 A. Yes.

22 **Q. What is the purpose of this**
23 **provision?**

24 A. Let me refresh my memory on

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1 this. Well, the first sentence has to be
2 taken into context with the second.

3 **Q. Okay.**

4 A. The first sentence was put
5 in because there is a prohibition on the
6 payment of punitive damages. At some
7 point along the way, through an objection
8 to one of the prior plans, it was brought
9 to the attention of the ACCs that in
10 Alabama, the only way you could assert a
11 wrongful death claim is to call it a
12 punitive damage claim, even though you
13 were getting compensatory damages under
14 the wrongful death statute. And that was
15 felt to be basically unfair to Alabama
16 wrongful death claimants.

17 But, on the other hand, you
18 didn't simply want to eliminate the
19 prohibition on real punitive damages in
20 Alabama. So what you did was you said we
21 will apply a different jurisdiction; we
22 will apply Pennsylvania, which is where
23 the court was sitting in that Plan in
24 which this Plan was copied, which makes a

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1 distinction between wrongful death claims
2 and punitive damage claims.

3 So if an Alabama claim comes
4 in, you look to Pennsylvania law to see
5 whether it would be treated as a punitive
6 damages claim or a wrongful death
7 compensatory damages claim.

8 The second sentence has to
9 do with let's assume an Alabama claimant
10 brings a claim in Texas and the Texas
11 court was going to apply Alabama law, you
12 would want to have the same provision
13 apply to that choice of law claim as
14 applied if the claim had been brought in
15 Alabama in the first place. And I think
16 that kicks you back up to -- and there
17 was also the notion that with respect
18 to -- this was put in with respect to
19 insurers who were taking the position
20 that it was arbitrary to sort to
21 reclassify Alabama punitive damages
22 claims as something else.

23 So it basically says this
24 reclassification only applies to the

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1 Trust, and if the Trust presents some
2 Alabama claim, decided under Pennsylvania
3 law to be not a punitive damages claim to
4 an insurer for reimbursement and the
5 insurer says this is a punitive damage
6 claim, I am not going to pay it because
7 my policy doesn't cover punitive damage
8 claims, then what this does is preserve
9 that argument in a form of insurance
10 neutrality, if you will, to that
11 insurance company because it says that
12 this provision is binding only on the
13 Trust and the claimants. It's not
14 binding on the insurance company.

15 **Q. Okay. That was a fair
16 explanation.**

17 I am going to skip over 5.6
18 because we have been there.

19 **Okay. Let me direct your
20 attention to Section 5.7(b)(3),
21 specifically the last full paragraph and
22 the last sentence of that paragraph.**

23 A. Yes.

24 **Q. What's the purpose of that**

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1 **provision?**

2 A. As I understand it, that
3 provision is intended to deal with the
4 following situation: A plaintiff in the
5 court system isn't suing the Trust
6 because the Trust has a channelling
7 injunction to go through a proof of claim
8 process. Similarly, a claimant making a
9 proof of claim against another bankruptcy
10 trust under the TDPs for those trusts is
11 only generally required to produce
12 evidence of exposure to the product of
13 the Debtor, whose liability is that
14 bankruptcy trust has assumed.

15 As a result, plaintiffs
16 would not normally identify Grace
17 products as among the asbestos-containing
18 products to which they were exposed and a
19 suit against other defendants or in a
20 claim against another bankruptcy trust.

21 And what this says is the
22 Trust can't say, well, gee, you sued
23 Owens Illinois and you said you were
24 exposed to Owens Illinois products, but

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nothing in your complaint says you were exposed to Grace products, so I am going to treat the absence of an allegation of exposure to Grace products in the Owens Illinois suit as an omission that you weren't exposed to Grace products. Having said that, you still have to prove that you were exposed to Grace products to get money out of this Trust.

Q. And how do you do that? Let's assume for the moment that the theoretical plaintiff we are talking about in the tort case was asked in a deposition, tell me all the products that you were exposed to that contained asbestos and he went through a list of all the products of all the defendants in that case but didn't mention any products from Grace.

He still gets to come in and make a claim against the Grace Trust, correct?

A. Let me put it to you this way: Anybody can commit fraud. If a

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sentence, "In the event that PI Trust reasonably determines that any individual or entity has engaged in a pattern or practice providing unreliable medical evidence to the PI Trust, it may decline to accept additional evidence from such provider in the future."

It's not required to; it may, correct?

A. Yes.

Q. Okay. What role, if any, does the TAC play in deciding whether the PI Trust will accept additional evidence from that provider in the future?

A. I don't know that there is anything specific in the TDP that tells you the answer to that.

I believe in practice, the trustees would probably consult the TAC to get the TAC's views on the subject, which they might or might not accept, depending on what the views were. Certainly, a number of trusts have refused to take B reads from some or all

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plaintiff files under oath statements that this is 100 percent guaranteed the only products, asbestos-containing products, that I was ever exposed to and then turns around without any new or additional discovered evidence or anything else and basically lies in the declaration of -- the various evidentiary materials that he produces in support of his proof of claim, then that plaintiff could probably get away with defrauding this Trust, just like plaintiffs can get away with lying whether they got exposed to Owens Illinois products in the suit against Owens Illinois.

So, yes, there is nothing much you can do to write in a document that says thou shall not commit fraud and get away with it.

Q. All right. Let's go to Section 5.8, Claims Audit Program.

A. Yes.

Q. I want to direct your attention to the first paragraph, last

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of the so-called Judge Jack doctors.

Q. I was going to call this the Judge Jack provision.

Does an individual TAC member have a role in that decision even if the medical provider was for one of that TAC member's clients?

MR. FINCH: Object to form.

THE WITNESS: Well, again, the TAC doesn't have any role in the decision other than consultation. I suppose theoretically a TAC member could express his views on whether or not a particular medical provider that had done work for him or his clients was a sufficiently bad actor to be disqualified. The trustees, however, are the ones that are going to make that decision, not the TAC member.

MR. BROWN: I am going to suggest a short break because I think I am getting close to the

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1 the indemnity covers that claim,
2 which, if it does and you can't
3 get it back from the plaintiff,
4 then it would be channelled to the
5 Trust, I guess.

6 BY MR. BROWN:

7 **Q. And subject to the payment**
8 **percentage?**

9 A. And subject to the payment
10 percentage.

11 **Q. Okay. Let me direct your**
12 **attention again to 6.4, which is entitled**
13 **Filing Requirements and Fees.**

14 A. Yes.

15 **Q. It says, "The trustees shall**
16 **have the discretion to determine, with**
17 **the consent of the TAC and Futures**
18 **Representative, (a) whether a claimant**
19 **must have previously filed an**
20 **asbestos-related personal injury claim in**
21 **the tort system to be eligible to file**
22 **the claim with the PI Trust..."**

23 **What exactly does that mean?**

24 A. That is a provision that it

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1 Trust and whatever, that if a Trust put
2 in either a requirement that you had to
3 file the claim against somebody in the
4 tort system or alternatively you imposed
5 a filing fee in the Trust of 50 or a
6 hundred bucks, it would render the
7 practice unprofitable enough that it
8 would go away.

9 To my knowledge, I don't
10 think any -- this is a fairly standard
11 provision in these Trust TDPs. I don't
12 think it's ever been invoked by any trust
13 so far, because I don't think that the
14 perception has arisen that the problem of
15 the sort I described has become
16 widespread, but that's my understanding
17 of the rationale behind it.

18 **Q. Okay. Now, I would like to**
19 **direct you to --**

20 A. Again, Mr. Inselbuch would
21 have more definitive knowledge on that
22 subject than I would. So if he says
23 something different, I would stand to be
24 corrected by him.

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1 was put in as a precautionary mechanism
2 to deal with the possibility that the
3 trustees could conclude that a large
4 number of plaintiffs lawyers were only
5 filing claims against bankruptcy trusts,
6 that were not filing the claims against
7 solvent defendants in the tort system.

8 And the concept would be
9 that if that practice arose and became
10 widespread, it would create a possible
11 indicia of claims that were really not
12 legitimate, that people were violating --
13 it would mostly come up -- the concern
14 was where it would come up with is in the
15 Category 1 claims, which you would get a
16 minimal amount of money on minimal amount
17 of proof. It was sort of what in
18 bankruptcy cases would be regarded as a
19 convenience class.

20 And the idea would be if you
21 were filing a bunch of claims with a
22 bunch of trusts and not in the tort
23 system and were getting a hundred bucks
24 from this Trust and 200 bucks from that

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1 **Q. Okay. His answers will**
2 **supersede yours then?**

3 A. Almost assuredly.

4 MR. SHINER: Are you
5 volunteering him for deposition?

6 THE WITNESS: He's already
7 been identified. His deposition
8 is set for June 12th.

9 BY MR. BROWN:

10 **Q. Let's put the TDPs aside,**
11 **Mr. Lockwood. Did we mark earlier the**
12 **Cooperation Agreement?**

13 A. Not that I recall.

14 **Q. I know we talked about it.**
15 **(ACC 30(b)(6)-12 marked for**
16 **identification at this time.)**

17 THE WITNESS: Okay.

18 BY MR. BROWN:

19 **Q. Mr. Lockwood, we talked**
20 **about this document, titled the**
21 **Cooperation Agreement, marked ACC-12, a**
22 **bit earlier in your deposition.**

23 **And as I understand this,**
24 **this document is designed, in part, to**

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enable the Asbestos PI Trust to comply with whatever obligations it might have under asbestos insurance policies in the event that it elects to seek insurance coverage for claims. And it requires the Reorganized Debtors to maintain a whole host of documents in various databases and so forth that are described.

Is that a fair generalization of the document?

A. Yeah, I think so.

Q. Okay. Now, is there any requirement vis-a-vie the Reorganized Debtors and the asbestos insurance entities that this information be preserved for purposes of coverage litigation or frankly underlying litigation?

A. Do you mean is there somewhere in the Plan documents a direct undertaking writing for the Reorganized Debtors to the insurers as opposed to the Reorganized Debtors to the Trust?

Q. Right.

PPS
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Q. And to the extent that a claim gets paid, it's subject to the payment percentage; is that your understanding?

A. Correct.

Q. Now, if the Asbestos PI Trust pays as PI claim and it only pays the schedule value times the payment percentage to the claimant, is the Asbestos PI Trust able to recoup the entire schedule value from the insurers?

A. That depends on, A, whatever agreements might exist that relate to that subject that bind the Trust and, B, what some coverage court might decide are the insurers' coverage obligations if there is some dispute over that issue.

Q. Is there a difference between insurers that have Insurance Pi Reimbursement Agreements, I believe they are called, as opposed to insurers that are unsettled?

A. I would say potentially, yes.

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A. I don't believe so.

Q. Does the Trust contemplate maintaining these documents imperpituity or requiring the Reorganized Debtors to do so?

A. The Trust doesn't exist, so the Trust doesn't contemplate anything.

Q. All right. Does the ACC contemplate that the Trust will, for the life of the Trust, have these documents preserved?

A. The ACC contemplates that the trustees will, based on the facts and circumstances in the future as to what their relationships are with respect to insurers, do what their fiduciary obligations to maximize insurance coverage for the benefit of their beneficiaries will require.

Q. All right. You can put that aside.

The TDPs have a payment percentage that we talked about?

A. Correct.

PPS
Obj: R, BE

Q. What's the nature of the difference?

A. As a general proposition, the reimbursement agreements -- (There was an interruption at this time.)

THE WITNESS: My recollection is that as a general proposition, the reimbursement agreements provide for a specific amount of reimbursement expressed as a percentage or for some other basis of amounts that Grace paid in claims prior to the bankruptcy.

There is obviously a much stronger argument that if the Trust succeeds to those agreements, as we advocate that it should, that the Trust rights would be the same as Grace's were.

There might be arguments to a different effect, but certainly, there is a pretty strong argument that based on the pre-petition

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<p>1 I hear you; I understand 2 that you are hypothesizing something. 3 But I can't see how it can ever come to 4 pass. And so I have no idea. If a PD 5 claim -- I mean, I have never 6 considered -- I don't know the answer to 7 that hypothetical question. I just know 8 I don't think it can happen.</p> <p>9 Q. Okay. Under Travelers' 10 other agreement, which was a fully 11 settled agreement -- and I am not going 12 to put it in front of you right now; I 13 don't think it's necessary -- but to the 14 extent there is indemnification for 15 non-asbestos claims, how does that 16 indemnification claim get addressed in 17 the Plan?</p> <p>18 A. I think -- 19 MS. HARDING: Objection to 20 form. 21 MR. FINCH: Objection, asked 22 and answered, I think. 23 MS. ALCABES: I don't think 24 it's been answered.</p>	<p>1 and Class 7, right? 2 MR. FINCH: Objection. 3 MS. HARDING: Objection to 4 form. 5 THE WITNESS: That's my 6 understanding of the way the Plan 7 works. 8 BY MS. ALCABES: 9 Q. Just getting back to one 10 follow-up question along the lines that 11 Michael was asking you about the 12 retention of any rights under policies 13 that are being transferred under the 14 Transfer Agreement. 15 Can you just turn to the 16 TDPs -- I am sorry. Let me strike that. 17 I will get back to that. 18 You agree that the 19 reimbursement agreements are not subject 20 to the insurance neutrality provisions, 21 correct? 22 A. Correct. 23 MS. ALCABES: Can you give 24 me five minutes, and I will take a</p>
Page 319	Page 321
<p>1 THE WITNESS: I think the 2 answer was I am not aware of any 3 non-asbestos claims that could be 4 brought against that coverage. 5 But if it's not an asbestos PI 6 claim, then it isn't channelled to 7 the Trust and it's a claim against 8 Grace. And it would be handled 9 however claims against Grace get 10 handled under the Plan.</p> <p>11 BY MS. ALCABES: 12 Q. Potentially as a Class 9 13 claim? 14 A. To the extent, however the 15 Class 9 claims get treated, presents, 16 futures, contingent, whatever. 17 Q. So, for example, if an 18 environmental claim came up that had 19 nothing to do with asbestos and there is 20 a claim against Travelers that would 21 trigger the indemnity in its fully 22 settled agreement, that's a claim that 23 would be addressed separate and apart 24 from how claims were addressed in Class 6</p>	<p>1 break for five minutes and 2 re-group and see if we can wrap it 3 up. 4 (There was a break from 5:02 5 p.m. to 5:19 p.m.) 6 BY MS. ALCABES: 7 Q. Can you turn to Lockwood 8 Exhibit-4, which is Exhibit-6 to the 9 Plan. It is the Transfer Agreement. 10 A. Yes. 11 Q. And turn to page 3. It's 12 Section 2(c). And this is going back to 13 some other questions that Michael asked 14 you about, the rights that Grace may be 15 retaining under the policies that are 16 being transferred. 17 The last sentence of that 18 paragraph starts, "Upon the Effective 19 Date, the Insurance Contributors shall 20 cede to the Asbestos PI Trust all control 21 of the pursuit of any and all claims with 22 respect to any Asbestos Insurance 23 Policy..." 24 Do you see that?</p>

PP's
Obj:
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PP's
Obj: R, BE Page 322

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A. Yes.

Q. Actually let me finish it.

"...under any Asbestos

Insurance Policy, Asbestos Insurance Settlement Agreement, Asbestos In-Place Insurance Coverage, or Asbestos Insurance Reimbursement Agreement, and the Asbestos PI Trust shall have the right to control and direct the choice of counsel and conduct of all such proceedings."

So that seems to suggest that, in fact, Grace is retaining no control over the policies that are the subject of the Transfer Agreement; would you agree?

MS. HARDING: Object to the form.

PP's Obj: R, BE

THE WITNESS: Well, I don't know whether there is a distinction between control of the policies. I mean, what this talks about is control, the pursuit of any and all claims with respect to the policies.

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And it is my understanding that as to the asbestos insurers policies that are illuminated in the various schedules and definition and the other agreements, that Grace is transferring the rights under those policies and the Trust has control over them.

For example, if it wants to settle with an insurer, it can settle the entire policy buyback, if you will, and that there is no retained insurance rights that Grace has under those policies, yes.

BY MS. ALCABES:

Q. So if Grace wanted to tender a claim a non-asbestos claim under the policies, it would have to go to the Trust?

A. I don't think --

MS. HARDING: Object to the form.

CT

THE WITNESS: I don't think it has any right to tender any claims, period. The Trust hasn't agreed to act as some sort of front person for Grace to tender non-asbestos claims. This is an economic deal.

These policies that don't have asbestos exclusions, et cetera, et cetera, that are defined in this thing are the rights under those policies for coverage are being assigned to this Trust as part of the deal. And Grace isn't retaining some economic interest in those policies, according to my understanding of this Plan.

MS. ALCABES: Okay. Let's mark one last exhibit.

(ACC 30(b)(6)-16 marked for identification at this time.)

THE WITNESS: I have it.

BY MS. ALCABES:

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PP's
Obj: R, BE

Q. Okay. These are Travelers -- sorry -- the Debtors' Responses to RFA served by Travelers. Do you see that?

A. Yes.

Q. Did you see these RFA responses before they were served on Travelers?

A. Yes.

Q. And do you concur with all the responses were provided by the Debtors?

A. Best I can recall, we did.

Q. So can you turn to Request to Admit Nos. 15 and 16. They sort of go hand in hand. It's on the last page, page 13 of the RFA responses.

A. Yes, I see them.

Q. And the request is to admit that the 1996 agreement is an executory contract, and that request is denied.

A. I thought it was 1992 agreement.

Q. I am reading from page 13.

PP's
Obj: R, BE

1 A. Well, the answer to that is,
2 first, normally the punitive or potential
3 indirect claimant, as a defendant in the
4 state court action, would have the right
5 to get discovery from the plaintiff. And
6 that discovery in many jurisdictions, if
7 not most, would include discovery of the
8 plaintiff as to whether that plaintiff
9 had filed claims with any Trust,
10 including the prospective Grace Trust.

11 If the state court, for some
12 reason or another, said that that
13 discovery against the plaintiff would not
14 be permitted, it seems unlikely that
15 discovery of the same information from a
16 Trust would be permitted because the
17 hypothesis -- by hypothesis, the state
18 law doesn't regard it as relevant. So
19 under normal circumstances, it's hard to
20 imagine why an indirect claimant would
21 ever need discovery from a Trust.

22 That stated, there are
23 provisions in Section 6.5 that allow
24 indirect claimants or anybody else to try

1 and get a subpoena from a court, either
2 the Bankruptcy Court or the Delaware
3 Court or the United States Court for the
4 District of Delaware, for such records.
5 And whichever court that subpoena is
6 sought to be issued from will decide
7 whether or not the prospective indirect
8 claimant, because you won't be an
9 indirect claimant until you lose the suit
10 with the plaintiff -- whether that
11 prospective indirect claimant will or
12 will not be given access to that
13 information by the Trust. But the first
14 line of attack is getting it from the
15 plaintiff.

16 And I might add, other than
17 the recitation that the submission and
18 the proof of claim is part of settlement
19 discussions, which is simply a view like
20 any defendant and a plaintiff might say
21 we agree that our settlement discussions
22 and our settlement agreement is
23 confidential, whether or not that makes
24 it non discoverable to a third party that

1 isn't bound by the settlement agreement
2 is a matter, again, of federal or state
3 applicable non-bankruptcy law.

4 **Q. But as you interpret the TDP**
5 **then, there is not an outright**
6 **prohibition from a Payne in discovery**
7 **against the Trust?**

8 A. No.

9 **Q. Okay.**

10 MS. COBB: Well, those are
11 my questions, and I reserve the
12 right to ask follow-up questions,
13 depending upon the progression of
14 the questioning by the insurers.
15 But I will pass the witness to
16 Mr. Cohn.

17 MR. DANIEL COHN: Thank you.

18 MS. COBB: And thank you for
19 your courtesy, Dan.

20 MR. DANIEL COHN: You are
21 very welcome.

22 - - -

23 EXAMINATION

24 - - -

1 **BY MR. DANIEL COHN:**

2 **Q. All right. Mr. Lockwood,**
3 **you are the representative of the**
4 **Asbestos PI Committee who is most**
5 **knowledgeable on the topics as to which**
6 **the Libby claimants have designated a**
7 **Rule 30(b)(6) deposition?**

8 A. Most knowledgeable about the
9 full range of the topics. There might be
10 individual topics that I might defer, as
11 I have in a few questions earlier, for
12 example, to my partner, Mr. Inselbuch,
13 whose deposition is scheduled, but yes.

14 **Q. And if I may, I want to**
15 **start off with a couple of matters of**
16 **terminology. When I use the term "Libby**
17 **claimants," I am referring to the clients**
18 **of my firm who are people who allege that**
19 **they have suffered personal injury from**
20 **exposure to asbestos of Grace in Lincoln**
21 **County, Montana.**

22 A. Okay.

23 **Q. And the other terminological**
24 **matter I want to get straight is that,**

PP's
Obj:
R

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1 whenever possible, I will try to use
2 terms that are defined in the Plan for
3 the sake of clarity. And when I use a
4 term that is defined in the Plan, I am
5 using it with the meaning so defined.

6 A. Okay.

7 Q. And may I ask that when you
8 give answers, that you use terms that are
9 defined in the Plan, and that unless you
10 otherwise explain it to me, I will assume
11 that you are using that term with the
12 definition defined in the Plan?

13 A. If I use the term in an
14 answer, I will try and make sure that I
15 am using it as defined in the Plan.

16 Q. All right. Referring to
17 Exhibit-3, which is -- and I am sorry.
18 Not Plan Exhibit-3.

19 A. Okay.

20 Q. ACC Exhibit-3.

21 MS. HARDING: Can you remind
22 me what that is, please?

23 MR. DANIEL COHN: That's the
24 Form 8-K with the Term Sheet

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1 attached.

2 THE WITNESS: I have it.
3 BY MR. DANIEL COHN:

4 Q. Who negotiated the deal
5 that's embodied in that Term Sheet on
6 behalf of the Asbestos PI Committee?

7 MR. FINCH: Objection.

8 MS. HARDING: Objection.

9 MR. FINCH: To the extent it
10 enters into Plan negotiations, I
11 am not sure how it relevant to the
12 confirmation here.

13 MS. HARDING: Same
14 objection.

15 THE WITNESS: Are you
16 instructing me to answer it?

17 MR. FINCH: I will let you
18 answer that question, and we will
19 see how far it goes.

20 THE WITNESS: I am not
21 entirely sure I remember
22 accurately who the parties were,
23 and it also depends on what you
24 mean by involved in negotiating.

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1 There were direct negotiations
2 between sort of principals, if you
3 will, and then there were other
4 people, like, myself, that were
5 involved in commenting on drafts
6 of the Term Sheet to other people
7 on their side.

8 But taking the term and
9 meaning of who was face-to-face,
10 my recollection is that on behalf
11 of the ACC, it was a combination
12 of what was designated or called a
13 negotiating subcommittee of the
14 ACC, and my partner,
15 Mr. Inselbuch.

16 The people on the
17 negotiating subcommittee, I
18 believe, included Joe Rice,
19 Russell Budd, and I think Perry
20 Weitz and John Cooney, but I am
21 not positive about that. But I
22 believe it was those four. It
23 could have been three, but I think
24 it was those four.

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1 BY MR. DANIEL COHEN:

2 Q. And was the Libby claimant
3 representative on the committee a member
4 of the negotiating subcommittee?

5 A. Not to the best of my
6 recollection.

7 Q. Was the Term Sheet submitted
8 to a vote by the committee?

9 MS. HARDING: Objection.

10 THE WITNESS: Well, I don't
11 know whether the Term Sheet in
12 precisely the form that it exists
13 in Exhibit-3 was submitted for a
14 vote, but certainly a document
15 embodying the terms of the Term
16 Sheet was submitted to a vote of
17 the committee.

18 BY MR. DANIEL COHEN:

19 Q. And did that vote result in
20 approval of the deal?

21 A. Yes.

22 Q. How did the Libby claimants
23 vote?

24 A. I don't recall, but I am

PP's
Obj:
R

PP's
Obj: R

PP's
Obj: R

PP's
Obj: R

PP's
Obj: R

PP's
Obj: R

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1 terms from the previous plans that I am
2 aware of.

3 **Q. As the ACC's designee to**
4 **take this 30(b)(6) deposition, would you**
5 **be aware if there were such an agreement?**

6 A. I believe I would be, yeah.

7 **Q. What agreements, if any,**
8 **were struck at the time of ACC Exhibit-3**
9 **concerning how Libby claimants' claims**
10 **would be treated?**

11 A. Other than that they would
12 be part of the asbestos claimants whose
13 claims would be channelled to the Trust
14 and whose consideration would be paid out
15 of the assets that were to be contributed
16 to the asbestos Trust under the Term
17 Sheet, there were no agreements that I am
18 aware of.

19 **Q. Were there any agreements**
20 **concerning who would bear responsibility**
21 **for restitution claims, if any, in**
22 **connection with the criminal trial now**
23 **going on in Montana?**

24 MS. HARDING: Object to

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1 form.

2 THE WITNESS: I don't
3 believe there were at that time,
4 no.

5 BY MR. DANIEL COHN:

6 **Q. Have there been any**
7 **agreement on that subject since then?**

8 A. Well, there is provisions in
9 the Plan that speak to that, so yes.

10 **Q. Apart from provisions of the**
11 **Plan, are there any agreements between**
12 **the Asbestos PI Committee and any of the**
13 **other Plan proponents on the subject**
14 **matter of the Plan?**

15 A. The Plan embodies the
16 agreements. There are no side
17 agreements, oral or written, that vary
18 from the Plan that I am aware of. And,
19 indeed, I would be very surprised if I
20 was not aware -- if there were any that I
21 was not aware of.

22 **Q. All right. And one last**
23 **question on this subject. It has been**
24 **known from time to time for the**

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1 **co-proponents of a Plan to enter into a**
2 **co-proponent agreement governing that**
3 **relationship. Is there any such**
4 **agreement, written or orally?**

5 A. No. Well, you say written
6 or oral. There is certainly no written
7 agreement of that. I mean, the Plan
8 itself -- other than the Plan itself. I
9 mean, when you sign on to a Plan, is the
10 Plan proponent with somebody else is a
11 Plan proponent. That's in a written
12 document, and we have sort of agreed.

13 But if you are talking about
14 some oral agreement that says this binds
15 us outside the Plan or -- I am not sure
16 really what kind of agreement you have in
17 mind. But, as far as I am aware, there
18 isn't any such other than what's
19 reflected in the Plan itself.

20 MR. FINCH: The parties to
21 the Plan also, to the extent there
22 are issues in common, there may
23 well be a common interest
24 privilege for purposes of

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1 discovery and litigation of
2 confirmation objections. But
3 those are not -- I would not
4 regard those as any types of
5 agreements you are questioning
6 about.

7 BY MR. DANIEL COHN:

8 **Q. All right. Directing your**
9 **attention now to ACC Exhibit-11, which is**
10 **the TDP.**

11 A. I have it.

12 **Q. All right. Who drafted the**
13 **TDP?**

14 MR. FINCH: Objection. This
15 gets into Plan negotiations and
16 drafting. I will let you answer
17 that question, but we will see how
18 it goes from there.

19 THE WITNESS: To some
20 extent, Mr. Inselbuch may know
21 more about this than I do. But I
22 have a pretty good knowledge of
23 it.

24 As I have previously

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<p>CI</p> <p>CNA</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p>Page 382</p> <p>mentioned in this deposition, this TDP in its inception was a sort of mark-up job on one of the previous TDPs from one of the previous bankruptcies that that had been confirmed. I don't recall, as I sit here today, which one it was, but it would have been one of the more recent ones.</p> <p>It then, of course, had to be modified to reflect the particularities of Grace and the claims against Grace and what have you. And you have heard some testimony about things like Sections 5.12 and 5.13. The participants that did it were basically counsel for the ACC, counsel for the FCR, and members of the ACC itself in terms of reviewing and commenting on things, and the FCR himself.</p> <p>The actual, physical drafting as opposed to the</p> <p>PP's Obj: R</p>	<p>Page 384</p> <p>1 A. I have it.</p> <p>2 Q. In the second sentence,</p> <p>3 there is reference to, and I quote,</p> <p>4 "...the intention of paying all claimants</p> <p>5 over time as equivalent a share as</p> <p>6 possible of the value of their claims</p> <p>7 based on historical values for</p> <p>8 substantially similar claims in the tort</p> <p>9 system."</p> <p>10 A. Yes.</p> <p>11 Q. Now, is that, in fact, the</p> <p>12 intention of the Asbestos PI Committee in</p> <p>13 respect to how the TDP should operate?</p> <p>14 A. The intention of the ACC on</p> <p>15 how the TDP should operate is expressed</p> <p>16 in all of the terms of the TDP. That</p> <p>17 particular aspirational sentence that you</p> <p>18 have plucked from the beginning of the</p> <p>19 TDP is not is not somehow or another a</p> <p>20 super-preemptory provision that controls</p> <p>21 all the other provisions in the Trust</p> <p>22 that somebody might think either were or</p> <p>23 were not in agreement with it.</p> <p>24 Q. In that phrase that I just</p>
<p>CI</p> <p>CNA</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p>Page 383</p> <p>commenting and what have you was, I believe, done by Caplin & Drysdale.</p> <p>BY MR. DANIEL COHN:</p> <p>Q. What input, if any, did Grace have concerning the TDP?</p> <p>MS. HARDING: Objection with respect to negotiations.</p> <p>THE WITNESS: Well, it was a general proposition. Grace was furnished copies of drafts and afforded the opportunity to comment on them.</p> <p>BY MR. DANIEL COHN:</p> <p>Q. And were any changes made to what sounds like an ACC FCR draft at the behest of Grace?</p> <p>MS. HARDING: Same objection.</p> <p>THE WITNESS: I don't really recall.</p> <p>BY MR. DANIEL COHN:</p> <p>Q. Directing your attention to Section 2.1 of the TDP.</p> <p>PP's Obj: R</p> <p>PP's Obj: R</p>	<p>Page 385</p> <p>1 read, what does the term "historical</p> <p>2 values" mean?</p> <p>3 A. Again, Mr. Inselbuch</p> <p>4 probably would have a more definitive</p> <p>5 knowledge of this, but my understanding</p> <p>6 is that it refers to the historical</p> <p>7 claims data primarily in this particular</p> <p>8 case from Grace with respect to</p> <p>9 settlements and judgments in the tort</p> <p>10 system as the starting point.</p> <p>11 Q. If that's the starting</p> <p>12 point, what else is meant by historical</p> <p>13 value?</p> <p>14 A. Well, again, this is boiler</p> <p>15 plate language from TDPs. In some cases,</p> <p>16 depending upon the facts of the case, the</p> <p>17 claims history of comparable defendants</p> <p>18 in the tort system is looked at.</p> <p>19 The TDPs are generally</p> <p>20 drafted in consultation with the</p> <p>21 committees asbestos claims advisor which</p> <p>22 is usually, if not invariably, Mark</p> <p>23 Peterson, and depending on the amount of</p> <p>24 claims data available to Mr. Peterson</p>

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1 some extent, subject to referring
2 you to Mr. Inselbuch about more
3 specifics, the expedited review
4 values are an average of a certain
5 level nationally of claims of that
6 category.

7 But an election to take
8 expedited review is simply an
9 election by the claimant or the
10 claimant's lawyer that they will
11 accept that amount for their
12 claim. The historical value of
13 that claim -- it could be higher
14 or lower. I mean, the claim
15 itself has no historical value, so
16 you would be talking about the
17 historical value of some other
18 similar claim. And depending on
19 what level of similarity you were
20 opting for, the historical value
21 of the claim might be higher or
22 lower. So, I mean, the answer is
23 no.

24 BY MR. DANIEL COHN:

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1 **Q. All right. Let's add the**
2 **assumption that both claims elect**
3 **individual review and that the Trust upon**
4 **examination of the claims concludes that**
5 **each claim has an historical value of**
6 **\$100,000.**

7 **Should those claims be each**
8 **liquidated for \$100,000?**

9 MR. FINCH: Object to form.

10 MS. HARDING: Object to
11 form.

12 THE WITNESS: The individual
13 review process has a number of
14 factors that are taken into
15 account that are spelled out in
16 the TDP, and some of those
17 factors, as best I can recall --
18 and, again, this is something you
19 probably want to explore with
20 Mr. Inselbuch.

21 But, in general, some of
22 those factors are related to
23 history, and a lot of the factors
24 are related to who the claimant is

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1 and what the nature of his disease
2 is. They are very individual
3 specific.

4 And in individual review,
5 the claims handlers, under my
6 understanding, don't go back to
7 the files and try and find some
8 claim that's identical to this
9 claim that they can could use to
10 say it has a historical value of X
11 and, therefore, we are going to
12 apply it. They look at think
13 claim, and they apply the
14 criteria. And that's the value
15 they come up with.

16 BY MR. DANIEL COHEN:

17 **Q. So if they do not do exactly**
18 **what you said they don't do, which is to**
19 **look for the closest historical analog to**
20 **the claim, what standard do they apply?**

21 MS. HARDING: Object to
22 form.

23 MR. FINCH: Objection to
24 form.

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1 THE WITNESS: They apply the
2 standards set by the Trust when
3 they go for individual review
4 which are set forth in Section
5 5.3(b)(2) of the TDP. In
6 Romanette -- well, it says, "The
7 PI Trust shall thus take into
8 consideration all of the factors
9 that affect the severity of
10 damages and values within the tort
11 system," which would include the
12 tort system as existed today,
13 "including, but not limited to,
14 credible evidence of..." Romanette
15 (i) through (vi), some of which
16 involve as in Romanette (vi) and
17 Romanette (v), history.

18 BY MR. DANIEL COHN:

19 **Q. All right. Let me ask the**
20 **question but not in terms of historical**
21 **value but in terms of value in the tort**
22 **system today.**

23 **Is the purpose of the**
24 **5.3(b)(2) criteria that you just referred**

PP's
Cfr

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1 **to to best approximate the value of the**
2 **claim in the tort system today?**

3 MS. HARDING: Object to
4 form.

5 MR. FINCH: Objection to
6 form.

7 THE WITNESS: The purpose of
8 the criteria -- again,
9 Mr. Inselbuch may be better to
10 this than I am.

11 But the purpose of the
12 criteria is to negotiate about the
13 claimant and his lawyer a deal
14 that is acceptable to both of
15 them. Because if you don't
16 negotiate an acceptable deal in
17 individual review, then you go to
18 mediation, binding or nonbinding
19 arbitration, and the tort system.

20 So at the end of the day,
21 this is referred to as an
22 alternative dispute resolution
23 system for a reason, because
24 that's what it is. You start out

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1 with standing settlement offers in
2 an effort to get rid of most of
3 the claims without a lot of
4 processing costs on the basis of
5 values that are perceived to be
6 likely to be acceptable because
7 they are plus or minus some
8 reasonable amount from various
9 plaintiffs law firms' historical
10 values. You move to individual
11 review for people that want more
12 than that and who think they can
13 show they are entitled to it. And
14 if you don't persuade them in the
15 negotiation of individual review,
16 you can wind up in the tort system
17 with a judge and a jury deciding
18 what the claim is worth, applying
19 applicable non-bankruptcy law,
20 which will not include, to my
21 knowledge, anything about the
22 historical settlements or the
23 historical judgments experienced
24 by the Debtor for whose

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1 liabilities the Trust has assumed.
2 BY MR. DANIEL COHN:

3 **Q. Right. So the ultimate end**
4 **point, if the alternative dispute**
5 **resolution process does not succeed, is**
6 **to go to the tort system and have a jury**
7 **or judge, if that that gets elected,**
8 **actually demonstrate the value of the**
9 **claim in the tort system?**

10 A. That's correct. And these
11 plans are drafted in the hope that you
12 will eliminate that from happening in
13 very many cases because, A, it produces
14 widely disparate results and, B, it
15 increases claims processing expenses by a
16 very large margin.

17 And the experience of most
18 of these trusts in other cases is that
19 there are vanishingly few cases that ever
20 wind up going into the tort system.

21 **Q. Well, let's talk for a**
22 **minute about experience in other cases.**
23 **In other cases, if you can**
24 **generalize, approximately what percentage**

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1 **of claims are settled upon expedited**
2 **review?**

3 MR. FINCH: Objection, lack
4 of foundation.

5 MS. HARDING: Objection to
6 form.

7 THE WITNESS: I have no
8 knowledge of that. You can ask
9 Mr. Inselbuch that. My bet is
10 that he doesn't have any knowledge
11 of that, either, but he might.

12 BY MR. DANIEL COHN:

13 **Q. You did say a moment ago,**
14 **though, that vanishingly few claims in**
15 **other cases end up in the tort system?**

16 A. That much, I have been told
17 by people that work with the other
18 trusts, but that's a narrative
19 description.

20 I couldn't actually tell you
21 whether it's one case a year or five
22 cases or none. It's just not very many.

23 But when you start moving
24 backward from that, how many cases go to

1 arbitration, how many cases go to
2 individual review, what percentage goes
3 to expedited review, each Trust does have
4 records from which they can derive that
5 information. And it may be that
6 Mr. Inselbuch might have knowledge of
7 some of that. I don't.

8 MR. FINCH: Grace ACC
9 certainly doesn't.

10 BY MR. DANIEL COHN:

11 **Q. You have earlier testified**
12 **that the starting point for the TDP was**
13 **the TDP in some recent case; is that**
14 **correct?**

15 A. That's my recollection.

16 **Q. And revisions were then made**
17 **to address the specific needs of the**
18 **Grace case; is that correct?**

19 A. Revisions over time were
20 made. There had been multiple drafts of
21 the TDP over the last -- I don't know --
22 eight months. And some of the earlier
23 drafts got filed as in the September
24 filing, and --

1 (There was an interruption
2 at this time.)

3 BY MR. DANIEL COHN:

4 **Q. All right. Were any of**
5 **those revisions made with the specific**
6 **intention of addressing issues that had**
7 **been raised by the Libby claimants?**

8 A. Yes.

9 **Q. Which ones? Or why don't**
10 **you start off with one, and then we will**
11 **go through it.**

12 A. I don't know that I will get
13 a hundred percent of them, but for
14 example, in expedited review categories
15 in Section 5.3(a)(3), the category of
16 severe disabling pleural disease, Level
17 IV-B with its value and all of its
18 criteria, to my knowledge, has never
19 existed in any other TDP, in any other
20 case before and was entirely a function
21 of attempting to address concerns and
22 demands raised by the Libby claimants.
23 That's one that I know.

24 In addition to that, under

1 the Section 5.4(a) of the TDP, the
2 creation of a eight times multiple for
3 claimants whose exposure was 95 percent a
4 result of exposure to an
5 asbestos-containing product of Grace was
6 new, and the standard one is the five
7 times provision, which is also in here
8 for 75 percent exposure.

9 There was another one that I
10 was thinking about. Those are the two
11 that jump out. I know there is at least
12 another one that I was just thinking
13 about and I have forgotten about.

14 MR. DANIEL COHN: Why don't
15 we take a five-minute break, and
16 perhaps you will remember in that
17 period.

18 THE WITNESS: Well, I would
19 just assume not take a five-minute
20 break because I would like to get
21 as much of this done as I can, and
22 if every time I can't remember
23 something we take a five-minute
24 break, we will be here for a very

1 long time.

2 MR. DANIEL COHN: No, no. I
3 was not meaning to set a
4 precedent. But if you would like
5 --

6 THE WITNESS: If it comes to
7 me, I will volunteer it.

8 BY MR. DANIEL COHN:

9 **Q. All right. Then let's turn**
10 **our attention to disease Level IV-B.**
11 **Is that the level that's**
12 **labeled severe disabling pleural disease?**

13 A. Correct.

14 **Q. Would you please explain to**
15 **me how that provision was designed to**
16 **address Libby claims?**

17 MS. HARDING: Object to form
18 to the extent that it's designed
19 to address just Libby claims.

20 MR. FINCH: I join in that.

21 THE WITNESS: It was --

22 MS. HARDING: I think that's
23 what you said, right?

24 MR. DANIEL COHN: Well --